

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

JUANA MELGAREJO, §  
§  
Plaintiff, §  
§  
V. § CIVIL ACTION NO. 3:07-cv-1847  
§  
24 HOUR PROFESSIONAL, §  
JANITORIAL SERVICES, L.P. §  
§  
Defendant. §

MEMORANDUM ORDER

Before the Court is Defendant's Motion to Set Aside Default Judgment and For Leave to Further Plead or Answer (doc. 10) and Plaintiff's Motion for Entry of Default Judgment (doc. 9). After review of the motion and briefing, the Court **GRANTS** Defendant's Motion and **DENIES** Plaintiff's Motion.

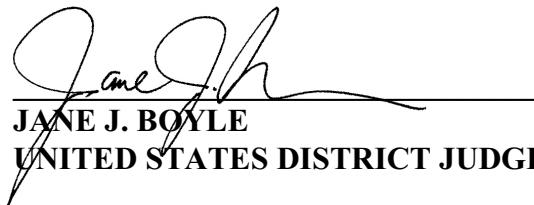
Federal Rule of Civil Procedure 55(c) permits the setting aside of a default judgment in accordance with Rule 60(b). Rule 60(b) recognizes, *inter alia*, "mistake, inadvertence, surprise or excusable neglect" as permissible grounds to move for such relief provided the motion is made within a reasonable time. Rule 60(b) is applied "equitably and liberally" to judgments of default because a trial on the merits is the favored means to resolve a legal action. *See Blios v. Friday*, 612 F.2d 938, 940 (5th Cir. 1980) (applying 60(b) to achieve substantial justice); *see, e.g., Azzopardi v. Ocean Drilling & Exploration, Co.*, 743 F.2d 890, 895-96 (5th Cir. 1984) (recognizing failure to answer was mistake on part of insurer and affirming order to set aside interlocutory default order). No injustice, however, may result from setting aside the default judgment. *Id.*

In relevant part, the *Blios* court noted that the plaintiff should not have to pay with the loss

of the cause of action because of the neglect of plaintiff's counsel to notice his change of address. *Id.* Whereas here, the neglect of Defendant's counsel to properly calendar the response date has resulted in a default judgment against Defendant, the Court likewise finds good cause to set aside the default judgment. Although Plaintiff has not filed a response to Defendant's Motion, the Court nevertheless fails to find any manifest injustice by setting aside the instant default judgment. In order to permit this action to be decided on the merits, the Court hereby grants Defendant leave to answer or plead in further response within 5 days of this Order.

**SO ORDERED.**

**SIGNED January 8, 2008**



JANE J. BOYLE  
UNITED STATES DISTRICT JUDGE